

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

RAUL E. SAN MARTIN
(Claimant)

PRECEDENT
DISABILITY DECISION
No. P-D-130
Case No. D-71-256

S.S.A. No.

The claimant appealed from Referee's Decision No. LA-D-9676 which held that the claimant was not entitled to disability benefits under Unemployment Insurance Code sections 2653, 2608 and 2629. Oral argument was presented by the claimant and the Department.

STATEMENT OF FACTS

The claimant filed a claim for disability insurance benefits on June 18, 1971, which claim was dated June 7, 1971. The claimant was first disabled on August 9, 1968 by reason of an industrial accident occurring on that day while the claimant was employed at Hoffman Brothers Meat Packing Company. He returned to work for this same employer from February 1970 until August 25, 1970 when he again returned to disabled status. A certificate from a Dr. Franklin dated June 18, 1971 indicated a lumbar spine condition and a disability from November 18, 1970 until July 31, 1971.

A workmen's compensation claim was filed and the claimant received temporary benefits from August 9, 1968 to and including at least June 17, 1971 at the rate of \$70 per week with the exception of the period of employment noted above.

The claimant contends that from November 18, 1970, the beginning date of the disability referred to in the claim for disability insurance benefits, the claimant would normally have been entitled to \$87 per week in

disability insurance benefits and since he received \$70 from the workmen's compensation carrier, the difference of \$17 per week should be paid to him.

The claimant states that the reason that the claim for disability insurance benefits was filed June 18, 1971 was because originally his counsel advised him not to file since it would be a waste of time, and, subsequently, another attorney advised him that it should be filed.

During the period in question the claimant received \$2,960 in workmen's compensation temporary disability benefits. The maximum amount payable to the claimant in state disability insurance benefits was \$2,262.

REASONS FOR DECISION

Section 2653 of the Unemployment Insurance Code provides as follows:

"The maximum amount of benefits payable to an individual during any one disability benefit period shall be 26 times his weekly benefit amount, but in no case shall the total amount of such benefits payable be more than one-half the total wages paid to the individual during his base period. . . ."

Section 2608 of the code further provides:

"'Disability benefit period,' with respect to any individual, means the continuous period of unemployment and disability beginning with the first day with respect to which the individual files a valid claim for unemployment compensation disability benefits. For the purposes of this part, two consecutive periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one disability benefit period."

Section 2629 of the code provides:

"Except as provided in this section, an individual is not eligible for disability benefits for any day of unemployment and disability for which he has received, or is entitled to receive benefits, in the form of cash payments for temporary disability indemnity, under a workmen's compensation law, or employer's liability law of this State, or of any other state, or of the Federal Government. If such cash payments are less than the amount he would otherwise receive as disability benefits under this part, he shall be entitled to receive for such day, if otherwise eligible, disability benefits, reduced by the amount of such cash payments. If, after receipt of, or determination of entitlement to receive, temporary disability benefits under a workmen's compensation law, a claim for unemployment compensation disability benefits is filed during the same continuous period of disability, because of a disability for which the workmen's compensation claim was made, the maximum amount of benefits payable hereunder during the disability benefit period thereby established shall be reduced by the amount of temporary disability benefits which the claimant received or has been determined to be entitled to receive under the Workmen's Compensation Law."

In argument to this board, it is urged on behalf of the claimant that the decision of the referee was in error on the following four counts:

1. That the Department should be estopped from denying benefits based upon information contained in the Department's disability insurance handbook;
2. That the referee is limited in his decision to the issue of the claimant's eligibility for benefits as set forth in its determination, namely, section 2653 of the Unemployment Insurance Code;

3. That good cause exists for backdating the claim to the commencement of the last period of the claimant's disability; and,
4. That the claimant is being penalized for filing his claim late and that the provisions of section 2629 of the code should be applied to equal periods of temporary disability benefits under workmen's compensation and the state disability benefits program.

In considering these contentions, we would first like to comment that the informational handbook referred to by counsel for the claimant is one of general information and does not purport to set forth specific provisions of the law or regulations affecting the payment of disability benefits as to a particular claim for such benefits. It does not have the effect of law or regulation nor has it been shown that the claimant in any way relied upon the information contained therein to his own detriment in claiming disability benefits. We must therefore reject this part of argument.

Section 5037 of Title 22 of the California Administrative Code states in part:

"In an appeal from a determination, the claimant's entitlement to benefits from the effective date of such determination to the date of the hearing may be in issue. . . ."

Applying this provision of the regulations to the present circumstances, the referee has the prerogative of considering the claimant's eligibility for disability benefits under any pertinent section of the code, and we would therefore find that he did not exceed his authority in this respect.

Section 2706.1 of the Unemployment Insurance Code provides that a first claim for disability benefits shall be filed not later than the twentieth consecutive day following the first compensable day of unemployment and disability with respect to which the claim is made, which time shall be extended upon a showing of good cause.

Generally, good cause for backdating a new or continued claim does not exist where late filing was due to the claimant's own negligence. Here, the failure of the claimant to file a prior claim which may have altered the situation, was due to advice given by counsel. Although the advice may have been improper, the claimant is bound by the negligence of counsel and does not have good cause to backdate his claim.

The primary contention before us is whether the total benefits paid to the claimant through the workmen's compensation claim should be deducted from the state disability award or only that portion covering the same period of disability.

The facts of the case closely parallel those considered by us in Disability Decision No. 644. In that case we stated in part:

"No right to benefits may be established unless and until a valid claim is filed (Benefit Decisions Nos. 6612 and 6616; Disability Decisions Nos. 570 and 623). The circumstances at the time the claim is filed must be considered unless provision is made to relate back to some other time (Benefit Decisions Nos. 6341, 6515, and 6564). At the time the claimant filed her claim for disability benefits, she had received \$621.42 for temporary disability indemnity for the same disability. It is our opinion that the express language of the third sentence of section 2629 of the code requires that this entire amount received during the period of disability through the date of the filing of her disability benefit claim must be deducted from the maximum amount of benefits for the disability benefit period thereby established without regard to the claimant's eligibility on a daily basis. Otherwise, the express purpose of avoidance of the duplication of benefits for the entire period of disability would be defeated. To the extent that Disability Decision No. 637 indicates that the effective date of the claim rather than the date the claim is filed is the significant date, it is hereby modified.

"If an individual has potential claims for benefits against various sources for the same day, such as disability benefits, or under a workmen's compensation or an unemployment compensation or an employer's liability law of this state or another state or the Federal Government, he is not obligated to file such claims (Disability Decisions Nos. 220 and 613). Having filed a claim, however, he is bound by his selection, even though subsequently he may discover that his action was to his disadvantage, either because of the time when his claim was filed or the source against which it was filed (Disability Decisions Nos. 154, 238, 399, and 513). . . ."

We further stated in the cited case:

"We consider it immaterial that had the claimant filed her claim for disability benefits promptly after the injury, she could have received such benefits for 26 weeks at the weekly rate . . . reduced only by the . . . workmen's compensation actually received during that period subject to a lien for the duplication of benefits on a daily basis The claimant did not choose to file her claim for disability benefits pending the determination of her workmen's compensation claim. Having chosen to pursue her workmen's compensation claim first and then to file her disability claim, she is bound by her selection, even though it was to her disadvantage because of the resulting deduction of benefits on the basis of duplication for the entire period of disability rather than duplication on a daily basis."

This is the identical situation before us in the present case. Had the claimant filed his disability claim concurrent with his workmen's compensation claim, he would have received the additional benefits which he now pursues. He did not file his claim and he is bound by that decision, even though it now shows such action to have been to his financial disadvantage.

We conclude in the present circumstances that section 2629 of the Unemployment Insurance Code requires the reduction of the disability benefits by the total amount of workmen's compensation temporary disability benefits paid during the disability benefit period. In effect this period began when the claimant again became disabled after a period of employment which ended August 25, 1970. Accordingly, the claimant is not entitled to disability insurance benefits since the maximum amount of disability insurance benefits to which he would be entitled is less than the amount of temporary workmen's compensation benefits received.

DECISION

The decision of the referee is affirmed. Benefits are denied in accordance with the provisions of section 2629 of the code.

Sacramento, California, February 17, 1972.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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